



Clarksburg Town Center – Violation Hearing

July 7, 2005

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APPROVED DEVELOPMENT STANDARDS

- The Development Standards for Clarksburg Town Center have always been clear, through succession of Developer-submitted, Board-approved and adopted, legally binding documentation.
- These clear Development Standards have been known to the Developer from the inception of the project to present.

DOCUMENT CHRONOLOGY

- MASTER PLAN & HYATTSTOWN SPECIAL STUDY AREA (Approved June 1994)
- DEVELOPMENT APPLICATION (November 1994)
- PROJECT PLAN #9-94004 OPINION (Approved May 11, 1995)
- PROJECT PLAN #9-94004 SIGNED DRAWINGS (Submitted November 23, 1994, Revised December 22 and March 8, 1996, Final Approval April 26, 1996)

DOCUMENT CHRONOLOGY

- **PRELIMINARY PLAN #1-95042 OPINION** (Approved September 28, 1995)
- **PRELIMINARY PLAN #1-95042 SIGNED DRAWINGS** (Submitted November 23, 1994, Final Submission and Approval November 20, 1995)
- **SITE PLAN #8-98001 OPINION** (Approved January 22, 1998)
- **SITE PLAN #8-98001 SIGNATURE SET** (Approved by Developer March 8, 1999; Approved by M-NCPPC March 24, 1999)
- **SITE PLAN #8-98001 ENFORCEMENT AGREEMENT** (Submitted by Linowes & Blocher March 18, 1999; Signed by Developer and M-NCPPC May 12, 1999)

Master Plan – Approved June, 1994

- “Ten Key Policies Guiding the Master Plan”:
 - **Policy #1** (p.16) - **“Town Scale of Development”**
 - “This Plan includes the Clarksburg Historic District as a key component of an expanded Town Center.”
 - **Policy #6** (p.26) -
 - “Plan proposes a transit-oriented, multi-use **Town Center which is compatible with the scale and character of the Clarksburg Historic District.**”

Master Plan — Approved June, 1994

- “Ten Key Policies Guiding the Master Plan”:
 - **Policy #6** (p.26) -
 - “This Plan continues the historic function of Clarksburg as a center of community life. It will be part of an expanded Town Center.”
 - **“Assuring compatibility of future development with the historic district has been a guiding principle of the planning process.”**

Development Application – November 1994

- Submitted by Steven M. Klebanoff (Managing General Partner) Clarksburg Land Associates Limited Partnership and Piedmont Land Associates Limited Partnership
T/A Clarksburg Town Center Venture (document on file with M-NCPPC)
- Proposed building height: "Maximum 50' "
- Attorney of record: Linowes and Blocher
- Note: Both Developer and Developer's counsel aware of a "maximum" height necessity to ensure Master Plan vision.

Project Plan #9-94004

- Two parts to the approved "Project Plan" –
 - Project Plan Opinion (Staff Report Tab #2), and
 - Project Plan Signed Drawings (Exhibit A) – Submitted by Developer as basis for approval of Project Plan (signed by John Carter for M-NCPPC on April 26, 1995)
- Note: Both Developer and Developer's Counsel are aware of the specific development standards submitted and approved.
- Note: The Staff Report submitted to the Board for today's hearing is incomplete, as it does not contain the Project Plan Signed Drawings (showing the specific development standards adopted by the Board)

Project Plan #9-94004

- Project Plan Opinion contains a Data Summary showing development standards “Required” within the RMX2 Zone as compared to those “Proposed” for Clarksburg Town Center.
 - “Proposed” column shows building heights of:
 - “ 4 stories (50 ft.)” for Commercial, and
 - “ 4 stories (45 ft.)” for Residential
 - “Proposed” column shows Setbacks of:
 - “ 0 ft. min.” for Commercial Buildings, and
 - “ 10 ft. min.” for Residential Buildings

Project Plan #9-94004

- Project Plan Signed Drawings (Exhibit A) show "Maximum" Heights for:
 - Single Family, Townhome, and Courtyard Townhomes: **35'**
 - ✓ ■ Multi-Family: **45'**

and "Minimum" Front Yard Setbacks for:

- Single Family, Townhome, Courtyard Townhome and Multi-Family units: **10'**

(Note that the Board adopted, from the originally required setbacks of 30' for residential and 25' for commercial, these reduced setbacks, as allowable based on compliance with the Master Plan.)

Preliminary Plan #1-95042

- Two parts to the approved "Preliminary Plan" –
 - Preliminary Plan Opinion (Staff Report Tab #3), and
 - Preliminary Plan Signed Drawings (Exhibit B) –
Submitted by Developer (November 20, 1995) as basis for approval of Preliminary Plan and signed by Joseph R. Davis for M-NCPPC
- Note: Both Developer and Developer's Counsel are aware of the specific development standards submitted and approved
- Note: The Staff Report submitted to the Board for today's hearing is incomplete, as it does not contain the Preliminary Plan Signed Drawings (showing the specific development standards adopted by the Board)

Preliminary Plan #1-95042 Opinion

- Page 1: "The underlying development authority, Project Plan No. 9-4004, was approved by the Planning Board on May 11, 1995, after two prior Planning Board meetings (held on April 6 and 20, 1995). The record for Preliminary Plan 1-95042 specifically includes the records from those prior hearings."
- Note: The Board recognizes the Project Plan as the Underlying Development Authority.

Preliminary Plan #1-95042 Opinion

- Page 6 - Condition #14:
"Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable."

Preliminary Plan #1-95042 Signed Drawings

- Preliminary Plan Signed Drawings (Exhibit B) show "Maximum" Heights for:

- Single Family, Townhome, and Courtyard Townhomes: **35'**
- Multi-Family: **5'**

and "Minimum" Front Yard Setbacks for:

- Single Family, Townhome, Courtyard Townhome and Multi-Family units: **10'**

Site Plan #8-98001

- Two parts to the approved "Site Plan" –
 - Site Plan Opinion (Staff Report Tab #4), and
 - Site Plan Signature Set (Exhibit C) – Submitted by Developer (initial submission December, 1997 and final submission/approval March, 1999)
- Note: Both Developer and Developer's Counsel are aware of the specific development standards submitted and approved
- Note: The Staff Report submitted to the Board for today's hearing is incomplete, as it does not contain the Signature Set (showing the specific development standards adopted by the Board)

Site Plan #8-98001 - Opinion

- Site Plan Review submitted to Board on January 16, 1998 by Development Review Staff (based on initial Site Plan Drawings submitted by Developer in December, 1997)
- Noted "Adjustments to Project Plan approval" do not include any references to height adjustments (i.e. Project and Preliminary Plan development standards are still clearly in effect)

Site Plan #8-98001 – Signature Set

- Site Plan Signature Set (Exhibit C) shows “Maximum” Heights for:
 - Single Family, Townhome, and Courtyard Townhomes: **35'**
 - Multi-Family: **45'**
- and “Minimum” Front Yard Setbacks for:
 - Single Family, Townhome, Courtyard Townhome and Multi-Family units: **10'**

' Site Plan #8-98001 – Enforcement Agreement

- Site Plan Enforcement Agreement (Staff Report Tab #5) prepared by Linowes & Blocher for the Developer and submitted to M-NCPPC March 18, 1999
- Site Plan Enforcement Agreement approved and signed by the Developer, and Joseph R. Davis for M-NCPPC, on May 12, 1999
- Site Plan Enforcement Agreement incorporates as attachment "Exhibit "C" – Certified Site Plan"
- "Certified Site Plan" contains exact development standards from the Site Plan Signature Set (Maximum heights of 35' and 45' and minimum front yard setbacks of 10')

Typical CTC Structures – Compatible with scale and character of Historic District



NOT Compatible with Scale and Character of Historic District

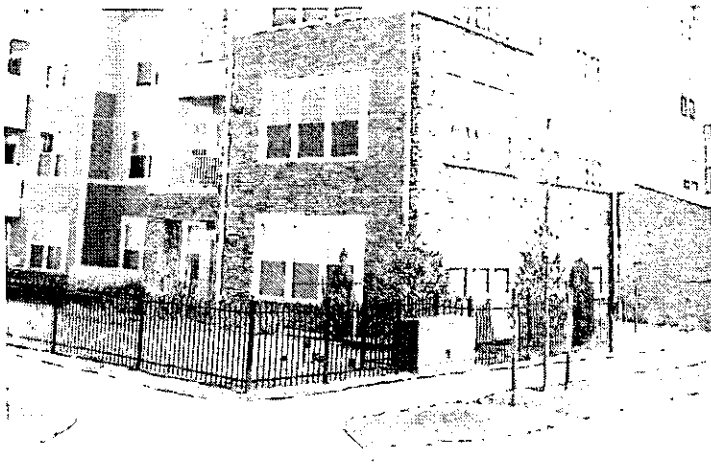


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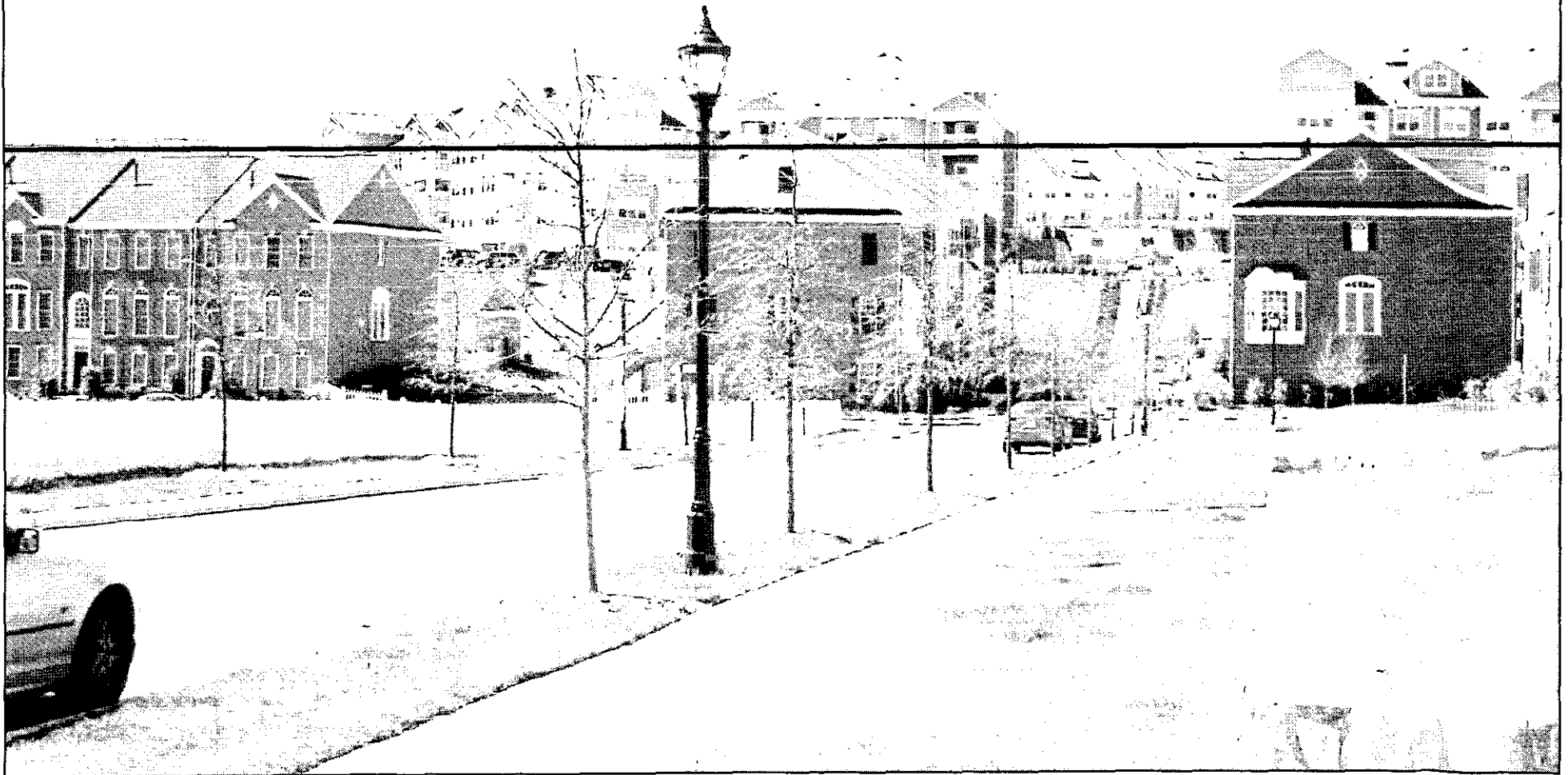
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Not Compatible with Historic District scale and character
Not Compatible with existing and proposed adjacent structures



Not Compatible with Historic District scale or character
Not Compatible with existing and proposed adjacent structures



Not Compatible with Historic District scale and character
Not Compatible in scale and character with adjacent structures



**Blatant Height Violations – Blatant Disregard for
Approved Development Standards; Blatant Disregard
For Master Plan Vision**



Height and Setback Violations

- There are no height amendments on file with M-NCPPC that would legally allow Developer to exceed maximum heights present in the development standards adopted.
- In the April 14, 2004 Height Threshold Hearing, Staff stated that "I made no amendments to height."
- Neither the Developer nor the Developer's counsel presented any valid height amendment information during the hearing. Neither the Developer nor the Developer's counsel has presented any valid records that would dismiss the legally binding height restrictions present within the Site Plan Enforcement Agreement.

Height and Setback Violations

- There is one setback amendment on file with M-NCPPC (Attachment "A"). This amendment is documented in a letter, dated January 25, 2005, by Wynn Witthans (M-NCPPC Development Review) to Mr. William Roberts of Miller and Smith. The letter states that:
 - *"This amendment is necessary to amend a 2-foot by 12.5 foot foundation layout field mistake.*
 - *... The Planning Board previously waived the unit to street setbacks for the original approval (from 30 feet to 10 feet)..."*
- The presence of this setback amendment indicates 1) that an amendment is necessary to change the setback from the originally approved setback (the setback as depicted on the Certified Site Plan data table) and 2) that the Planning Board did indeed approve and adopt a 10' front yard setback.

Blatant Violation of Development Standards

- Clear development standards
 - Submitted by the Developer
 - With full knowledge of Developer Counsel
 - Approved and adopted by the Board in a succession of legally binding documents
 - Reinforced through a Site Plan Enforcement Agreement submitted by Developer Counsel and signed by the Developer
 - Blatantly violated by the Developer

Pattern of Violation

- Height and setback violations within Clarksburg Town Center are not inadvertent, results of confusion or “messy records”, they are evidence of a repetitive process of gross violation by the Developer
- As with blatant height and setback violations, there are equally or even more egregious violations that must be heard by the Board before it even considers or is able to effectively determine appropriate sanctions

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"O" Street and Pedestrian Mews"

- **Site Plan Review #8-98001 – Staff Report from Wynn E. Witthans to the Montgomery County Planning Board, January 16, 1998 (Staff Report Tab #):**
 - **Page 10** – "Close to the edge of the Clarksburg Historic District, is a diagonal pedestrian mews. The mews contains sitting areas and two large lawn panels and connecting walks, linking the church with the Town Square. The sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. The mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development"
 - **Page 11** – "The extension of "O" street, perpendicular to Main Street, connects to the adjoining parcels to the south."

"O" Street and Pedestrian Mews"

- **Site Plan #8-98001 – Montgomery County Planning Board Opinion, March 3, 1998 (Staff Report Tab #):**
 - **Page 5, Condition #20** – "Dedication and construction of "O" Street extended to occur prior to the recordation of the last lot in the entire project or when the dedication of "O" Street by the adjacent property owners is made in conjunction with future development proposals."
- **Site Plan Enforcement Agreement (Staff Report Tab #5):**
 - **"Exhibit "B" – Development Program" B-6 (v)**
"Developer shall dedicate and construct "O" Street extended prior to the recordation of the last lot in the entire project or when the dedication of "O" Street by the adjacent property owners is made in conjunction with future development proposals."

"O" Street and Pedestrian Mews"

- "Exhibit C" – Certified Site Plan"

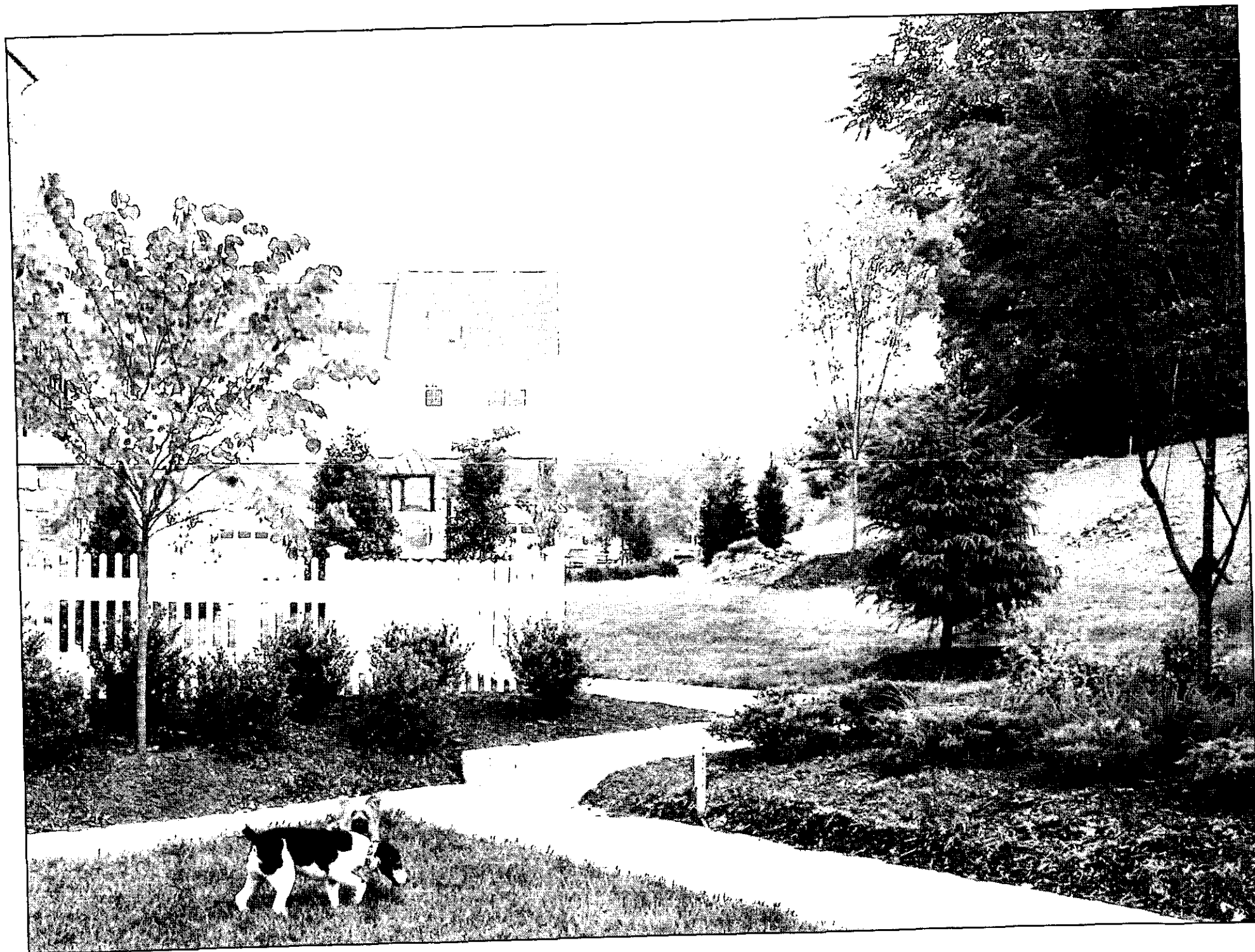
The Certified Site Plan attached to the Site Plan Enforcement Agreement shows both "O" Street and the Pedestrian Mews.

- "Exhibit D" – Certified Landscape and Lighting Plan"

Sheet L-2 of 25 (**Attachment B**), signed by S. Klebanoff on March 8, 1999 and approved and signed by Joseph R. Davis on May 13, 1999, depicts detail of both "O" Street and the Pedestrian Mews. The detail contained in the landscaping plan includes specific plantings along "O" Street and the Mews area, as well as indication of hardscape detail for the Mews.

"O" Street and Pedestrian Mews

- The Developer, in a flagrant pattern of violation, has eliminated "O" Street, and has constructed an asphalt road where the Pedestrian Mews was intended to be – destroying the intended connection between the historic Clarksburg and new Town Center.
- The Church spire is now barely visible from the Town Square area, the Mews is nothing more than a road flanked by townhouses, and the John Clark memorial will be moved to a location away from the Town Square - no longer host to the pedestrian gathering the Mews was intended to provide it.
- There is no amendment on record. Removal of these fundamental features constitutes a grievous loss to the Town Center and Clarksburg Community at large.





MPDU Discrepancies

- Calculations within the MPDU Location Plan received by CTCAC from M-NCPPC on June 10, 2005 (**Attachment C**) do not reconcile with current units within CTC.
- It appears, based on plans submitted and the assumption of approval of supplemental multi-family units, that there will be a concentration of MPDU units (up to 44% within certain areas), within the Town Square area, segregating rather than integrating MPDUs equally throughout the Town Center.
- The Board must “audit” the current phasing plan and units on site to provide an accurate report prior to considering appropriate remedies and sanctions.

Amenity Phasing Violations

- **Site Plan Enforcement Agreement (Staff Report Tab #5):**

- "Exhibit "E" – Phasing Plan"

1. General: (b) "All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540th Lot/Unit or by fifteen (15) years from the date of the Site Plan Approval ("Community-Wide Facilities Completion Date"). All remaining common areas must be conveyed to the Association on or before the Community-Wide Facilities Completion Date."

Amenity Phasing Violations

- **Site Plan Enforcement Agreement (Staff Report Tab #5):**

- "Exhibit "E" – Phasing Plan"

2. Stipulations: (b) *"Developer must construct all recreational facilities and convey such facilities and common areas within the timeframes contemplated in the Phasing Schedule and in these binding elements. Developer must arrange for inspections by Staff to ensure that all facilities are timely, correctly and completely constructed."*

(e) *"Unless the Planning Board has agreed to modify the Phasing Schedule, the Developer's failure to timely complete and turn over facilities and common areas shall operate to preclude Developer from receiving any additional building permits for that particular phase and all remaining phases until such time as the default is cured."*

Amenity Phasing Violations

- Once again, the Developer flagrantly violates the legally binding Site Plan Enforcement Agreement – apparently without fear of enforcement or penalty of any kind by the Board.
- Neither the pool, nor jogging or bike trails, nor certain other “community-wide” facilities have been completed. The Board must stop issuance of all building permits until the violation is cured.

Phase II Site Plan Discrepancies

- **Phase II Site Plan #8-0201 – Opinion (Staff Report Tab #6)**
 - Approved by Board May 9, 2002 (“...based on the testimony and evidence presented and on the Staff Report, which is made a part hereof...”)
 - Staff report contains reduced copies of Site Plans for Phase II (containing the same development standards submitted and approved for Phase I – i.e. 35’ and 45’ maximum heights and 10’ minimum front yard setbacks)

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Phase II Site Plan Discrepancies

- **Phase II Site Plan #8-0201 – DRC Transportation Planning Comments, dated November 19, 2001 (Attachment D)**
 - The DRC notes file for 8-02014 contain a reduced size Phase II Site Plan (signed April 26, 2001 by Tracy Graves/Developer, and April 27, 2001 by Ronald Collier, Professional Land Surveyor and Les Powell, CPJ) showing the same height and setback limits as the Phase I Certified Site Plan (i.e. 35' and 45' maximum heights and 10' minimum front yard setbacks).

Phase II Site Plan Discrepancies

■ **Site Plan "Signature Set" (Attachment E)**

- Signed by M-NCPPC (Richard Hawthorne stamp)
October 14, 2004
- Note: After CTCAC raised questions to the Developer regarding heights, etc. (from August, 2004 forward), and two years after Board approval of Phase II Site Plan, there miraculously appears a "Signature Set" absent any reference to height limitations in stories or feet, and minus the 10' minimum front yard setback.
- Note: Site Plan not valid, according to Zoning Ordinance 59-D-3.23, without specific height reference
- Note: Up to 1/3 or more of the units pertaining to Phase II were already permitted, built and occupied prior to October 14, 2004

Phase II Site Plan Discrepancies

- **Pool and Plaza – Minor Revision
(Attachment F – Sheets L1&L2 of L1-6)**
 - Minor revision to Phase II Site Plan, signed by Kim Ambrose/Developer and Wynn Witthans/M-NCPPC on 11/12/03
 - Note: Wynn Witthans signs both “11/12/02” and “11/12/03”
 - Note: How there be a “revision” dated prior to the date of the “Signature Set”?

Manor Home Amendment Discrepancies

- Manor Homes initially approved as "9-unit" structures
- Information obtained from DPS (public record of permitting application/approval) indicates Developer/Builder submitted for approval, in August 2000, plans for 12-unit structures
- DPS received approval by M-NCPPC to issue permits (for 12-unit structures) in August 2000
- Manor Home Amendment Hearing held February 10, 2005 to amend structures from 9 to 12 units

Manor Home Amendment Discrepancies

- **CTCAC requested copies (Email Set - Attachment G) of original plan submission (August 200) and amended plan submission (post February 10, 2005 Hearing)**
- **CTCAC was advised that the Developer/ Builder would not proceed with construction until receipt of a new building permit**
- **Developer/Builder currently proceeding with illegal construction**

CTCAC

- **CTCAC requested copies (Email Set - Attachment G) of original plan submission (August 200) and amended plan submission (post February 10, 2005 Hearing)**
- **CTCAC was advised that the Developer/ Builder would not proceed with construction until receipt of a new building permit**
- **Developer/Builder currently proceeding with illegal construction**

CTCAC & Clarksburg Community Expectations

- **To restore the faith of the community in the planning process, the Board must acknowledge height and setback violations, but must not attempt to determine sanctions without first conducting a full investigation of all violations and the damage that has been done to CTC.**
- **The Board must not paper-over Developer violations with amendments to the very standards designed and adopted to protect and fulfill the Master Plan vision.**